

REMARKS

Prior to entry of this amendment, claims 57-75 were pending in this application. Claims 57-58 and 60-75 are amended. Claim 59 is cancelled. Claims 76-89 are newly added. Accordingly, claims 57-58 and 60-89 will be pending upon entry of this amendment. The title is amended. The abstract is amended to reflect the amended title. No new matter is added.

In the Office Action mailed January 6, 2009, pending claims 57-75 were rejected under 35 U.S.C. § 103 as obvious over U.S. Patent No. 5,956,695 ("Carrithers").

The undersigned attorney and his colleague, Steven Lawrenz, appreciate Examiner Poinvil's consideration in discussing the Section 103 rejection during the telephone interview of March 3, 2009. Specifically, the parties discussed the Examiner's statement on pages 3-4 of the Office Action regarding the differences between Carrithers and the applicant's technology, e.g., the claimed "re-evaluation" feature. The Examiner agreed that Carrithers is different than the applicant's technology but requested that the applicant clarify the "re-evaluation" feature.

Without conceding to the merits of the rejections, the claims are amended above for clarification, to correct informalities, and to improve readability.

Applicant respectfully submits that independent claim 57 is allowable at least because the applied reference fails to disclose or suggest "automatically returning the first instruction to the payment queue for later re-evaluation *based upon payments received by the account holder from the counterparty subsequent to the determining whether to selectively reject the payment-based transaction* if the amount of the payment-based transaction exceeds the available balance" (emphasis added), as now recited by applicant's claim 57.

Page 3 of the Office Action admits that Carrithers fails to disclose that "the first instruction is returned to the payment queue for later re-evaluation in the event that the amount of payment authorized by the first instruction exceeds the said available balance" as was previously recited by independent claim 57. In making the Section 103 rejection, page 3 of the Office Action alleged "that if an amount on the customer's debit or credit account is insufficient to cover a particular transaction, *the customer* may add additional funds to his/her debit card or request an additional credit limit in his/her credit card thus providing funds to cover the particular transaction" (emphasis added).

In contrast, independent claim 57 now includes the feature "automatically returning the first instruction to the payment queue for later re-evaluation *based upon payments received by the account holder from the counterparty* subsequent to the determining whether to selectively reject the payment-based transaction if the amount of the payment-based transaction exceeds the available balance" (emphasis added). Applicant respectfully submits that the applied reference fails to disclose or suggest re-evaluation of an instruction based upon payments received from the counterparty. Applicant respectfully submits that independent claim 57 is allowable for at least the above reasons.

Dependent claim 58 and 60-75 depend from claim 57 and are respectfully submitted to be allowable for at least that reason.

New claims 76-89 are supported by applicant's disclosure, e.g., Figures 7 and 9A1-9F3 and corresponding sections of the specification.

Applicant respectfully submits that new claim 76 is allowable at least because it depends from independent claim 57 and because the applied references fail to disclose or suggest that "the automatically returning the first instruction to the payment queue is performed without communicating with the counterparty", as recited by claim 76. Further, applicant respectfully submits that new claim 77 is allowable at least because it depends from independent claim 57 and because the applied references fail to disclose

or suggest "initiating the later re-evaluation of the first instruction without a re-evaluation request from the counterparty", as recited by claim 77.

In contrast to claims 76 and 77, pages 3-4 of the Office Action alleged "performing a re-evaluating step would have been obvious to one of ordinary skill in the art to do in the system and method of Carrithers et al in order to assure that sufficient funds are available to cover the particular transaction or the customer is the owner of the credit or debit card involved in the particular transaction as so to deter fraudulent transactions." However, the Office Action does not further describe how the re-evaluating step could be performed. Moreover, applicant's representative believes that in the debit card system of Carrithers, (see, e.g., Carrithers, Abstract), following a customer's adding of additional funds, the customer would communicate with the merchant who would then re-request authorization of a particular transaction. In such a system, "the first instruction" is not automatically returned "to the payment queue without communicating with the counterparty" and a "later re-evaluation of the first instruction" is not initiated "without a re-evaluation request from the counterparty."

Accordingly, applicant respectfully submits that the applied references fail to disclose or suggest that "the automatically returning the first instruction to the payment queue is performed without communicating with the counterparty" or "initiating the later re-evaluation of the first instruction without a re-evaluation request from the counterparty", as respectively recited by claims 76 and 77.

Applicant respectfully submits that new claims 78-89 are allowable at least for reasons similar to the reasons why claims 57-58 and 60-77 are allowable.

Conclusion

In view of the foregoing, the pending claims are patentable. The applicants accordingly request reconsideration of the application and a mailing of a Notice of Allowance. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to contact Davin Chin at (206) 359-8000.

Respectfully submitted,
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